COURT OF APPEALS OF KENTUCKY,

February 4, 1955.

The Greyhound Corporation, Appellant,

vs.

Evelyn Leadman, Appellee.

Appeal from Breathitt Circuit Court, Ervine Turner, Judge.

Opinion of the Court by Judge Cammack Reversing.

This is an appeal from a judgment for $15,000 against the Greyhound Corporation for the negligence of its driver, Marion Clay Hamm, in operating one of its busses in such a careless and negligent manner as to cause it to collide with a steel bridge and injure Evelyn Leadman. The Corporation's ground for reversal is that it can not be held liable because there was no judgment against its driver.

Mrs. Leadman brought suit against the Corporation and its driver in 1952, alleging that she was injured as the result of the driver's negligence. The case proceeded to trial and the jury returned a verdict against the appellant at the August term, 1952. This appeal follows.

The only question before us is—Where there is no motion for a new trial, and a bill of exceptions is not filed, will the pleadings support the judgment? Civil Code of Practice, Section 340.

Mrs. Leadman based her recovery upon the negligence of the driver in operating the bus. The jury returned a verdict in her favor and against the Corporation only,

thereby finding the driver not guilty of any negligence. This verdict can not stand because the Corporation's liability is based upon the negligence of its driver. Illinois Central R. Co. v. Applegate's Adm'x. 268 Ky. 458, 105 SW 2d 153; Lewis v. Devasher, Ky., 267 SW 2d 938.

The appellee has asserted that a reversal of this judgment, upon what appellee calls a "technicality," would result in depriving her of property rights without due process of law, in violation of the 14th Amendment to the Constitution of the United States. We find no merit in this contention. Remedies for the situation created by the verdict were available to the appellee, but she did not utilize them.

The judgment is reversed, with directions that a judgment be entered in favor of the Corporation.

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ATTORNEYS FOR APPELLEE:

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ORDERS—KENTUCKY COURT OF APPEALS

Winter Term February 4th, 1955

The Greyhound Corporation, Appellant,

vs.

Evelyn Leadman, Appellee.

Appeal from a Judgment of the Breathitt Circuit Court

The Court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be reversed with directions that a judgment be entered in favor of the Corporation; which is ordered to be certified to said Court.

It is further considered that the appellant recover of the appellee its costs herein expended.

Issued: March 25, 1955.

APPENDIX "C."

Order of the Court of Appeals of Kentucky, entered March 25, 1955, Modifying Opinion of February 4, 1955, and Overruling Petition for Rehearing (R. 90).

ORDERS—KENTUCKY COURT OF APPEALS

Winter Term, March 25th, 1955

The Greyhound Corporation v: Leadman

Breathitt

The Court being sufficiently advised, the opinion delivered herein is modified on its face, and it is considered that the appellee's petition for rehearing be and the same is hereby overruled.